85-784 (1)

Supreme Court, U.S.
FILED
SEP 11 1985
JOSEPH F. SPANIOL, CLERK

NO._____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

---

DONALD G. PAUTZ,

PETITIONER,

VS.

STATE OF WISCONSIN,
DEPARTMENT OF INDUSTRY, LABOR
AND HUMAN RELATIONS,

RESPONDENT.

---

# PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

---

DONALD G. PAUTZ
Route 1, Box 312
Centuria, Wisconsin 54824
1-715-825-3122

57

## QUESTIONS PRESENTED FOR REVIEW

1. Whether the State of Wisconsin, Department of Industry, Labor and Human Relations (hereinafter DILHR), can have a Wisconsin statute enforced upon the defendant, when the defendant has demanded a trial by jury in the case at bar?

2. Whether the DILHR can proceed in the judicial system in the instant case without having proven jurisdiction, on the record, over the defendant?

3. Whether it is the duty of the courts to see that essential justice is done and that the United States Constitution is upheld as the supreme law of the land and to guard against any abridgments thereof?

4. Does the identification of the instant action of compelling the defendant, by Subpoena Duces Tecum, to produce his private books and records as a violation of Wisconsin statutes allow for the voiding out of the defendant's 4th, 5th, and 14th Amendment rights as a Citizen of the

United States?

5. Whether the court is responsible to hold less stringent standards than those of the legal profession for pro se litigants and to allow him opportunity to present supporting evidence in the case at bar?

TABLE OF CONTENTS


| | Page |
|---|---|
| QUESTIONS PRESENTED FOR REVIEW..... | (i) |
| TABLE OF AUTHORITIES..... | (v) |
| PETITION FOR WRIT OF CERTIORARI..... | 1 |
| OPINION BELOW..... | 2 |
| STATEMENT OF JURISDICTION..... | 2 |
| CONSTITUTIONAL PROVISIONS INVOLVED..... | 3 |
| STATEMENT OF THE CASE..... | 5 |
| Federal Questions raised..... | 7 |
| Basis For Federal Jurisdiction..... | 10 |
| REASONS FOR GRANTING THE WRIT..... | 13 |
| CONCLUSION..... | 16 |
| CERTIFICATE OF SERVICE..... | 17 |
| APPENDIX A | |
| Opinion Of The United States Court Of Appeals For The Seventh Circuit Dated June 26, 1985..... | A-1 |
| APPENDIX B | |
| Order Of The United States Court Of Appeals For The Seventh Circuit Dated June 26, 1985..... | B-1 |
| APPENDIX C | |
| Affidavit And Petition For Redress Of Grievances, State Of Wisconsin, Circuit Court, Polk County, Dated October 11, 1983..... | C-1 |

APPENDIX D

Petition For Removal Of State Case No. 83 CV 508 Jury Trial Demanded, United States District Court For The Western District Of Wisconsin, January 5, 1984..... D-1

APPENDIX E

Motion To Dismiss, Memorandum Of Law, File No. 83 CV 508, State Of Wisconsin, Circuit Court, Polk County, Dated October 11, 1983..... E-1

APPENDIX F

Notice Of Motion & Motion To Dismiss, State Of Wisconsin, Circuit Court, Polk County, Dated October 11, 1983..... F-1

APPENDIX G

Motion For Notification Of Rights Sua Sponte, State Of Wisconsin, Circuit Court, Polk County, Dated October 11, 1983..... G-1

APPENDIX H

Memorandum Of Law, Haines v Kerner, 404 US 519, State Of Wisconsin, Circuit Court, Polk County, Dated October 11, 1983..... H-1

# TABLE OF AUTHORITIES

CASES


| | Page |
|---|---|
| Adams v. New York, 192 U.S. 598..... | 14 |
| Ashwander V. Tennessee Valley Authority, 297 U.S. 288..... | 15 |
| Boyd v. United States, 116 U.S. 616. | 14 |
| Conley v. Gibson, 355 U.S. 41..... | 16 |
| Counselman v. Hitchcock, 142 U.S. 547 | 14 |
| Dioguardi v. Durning, 139 F 2nd 774. | 16 |
| FMC Seatrain Lines, Inc. 411 U.S. 726 | 15 |
| Garrity v. New Jersey, 385 U.S. 493. | 14 |
| Haines v. Kerner, 404 U.S. 519..... | 13,16 |
| Hale v. Henkel, 201 U.S. 76..... | 14 |
| Hoffman v. United States, 341 U.S. 479 | 14 |
| Interstate Commerce Commission v. Brimson, 154 U.S. 447..... | 15 |
| Latana v. Hopper, 102 F 2d 116..... | 15 |
| Lefkowitz v. Turley, 414 U.S. 70.... | 14 |
| Malloy v. Hogan, 378 U.S. 1..... | 14 |
| McNutt v. General Motors, 298 U.S. 189 | 15 |
| Owens v. City of Independence, Mo., 100 SCT 1398..... | 15 |
| Spevack v. Klein, 385 U.S. 511..... | 14 |

# TABLE OF AUTHORITIES


Page

CASES

Thompson v. Gaskill, 315 U.S. 673... 15

STATUTES AND OTHER AUTHORITIES

28 U.S.C. Section 8(f)..... 6

28 U.S.C. Section 1254(1)..... 2

United States Constitution:

Article III, Section 2..... 3

Article VI..... 3

Amendment IV..... 3

Amendment V..... 4

Amendment VI..... 4

Amendment VII..... 4

Amendment XIV..... 5

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1985

---

DONALD G. PAUTZ,

PETITIONER,

VS.

STATE OF WISCONSIN,
DEPARTMENT OF INDUSTRY, LABOR
AND HUMAN RELATIONS,

RESPONDENT.

---

# PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

---

The Petitioner, Donald G. Pautz, respectfully prays that a writ of certiorari

issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered on 26 June 1985.

## OPINION BELOW

The Court of Appeals entered its decision that the judgment of the United States District Court for the Western District of Wisconsin in this cause appealed from be, and the same is hereby, dismissed in part and affirmed in part, in accordance with the order of this court entered 26 June 1985. A copy of the decision is Appendix A. A copy of the order is Appendix B.

## JURISDICTION

The judgment sought to be reviewed was entered on 26 June 1985. The Court of Appeals dismissed in part and affirmed in part an order of the district court remanding this case to the state court from which it was removed, appealed by Donald G. Pautz. The jurisdiction of this court is invoked under Title 28, United States Code, Section

1254(1).[1]

## CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Article III, Section 2:

> The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States,....
>
> also, paragraph 2:
>
> In all other Cases before mentioned, the supreme Court shall have appellate jurisdiction, both as to Law and Fact, with such exceptions, and under such Regulations as the Congress shall make.
>
> also, paragraph 3:
>
> The trial of all Crimes, except in Cases of Impeachment, shall be by jury;....

United States Constitution, Article VI:

> This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

United States Constitution, Amendment IV:

> The right of the people to be secure

---

1/ No other petitioner is involved in this petition.

in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularily describing the place to be searched, and the persons or things to be seized.

United States Constitution, Amendment V:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VI:

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of Counsel for his defence.

United States Constitution, Amendment VII:

In Suits at common law, where the value

> in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be otherwise re-examined in any court of the United States, than according to the rules of the common law.

United States Constitution, Amendment XIV, Section I:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATEMENT OF THE CASE

The Respondent first contacted the Petitioner for the alleged purpose of conducting a routine audit. At the first audit meeting, the Petitioner learned that the audit was not routine, but rather it was a specific audit because the DILHR received an unidentified complaint that the Petitioner had people working for him that he was not claiming as employees.

At the first meeting also, the Petitioner had in possession his books and records and did

make all records pertinent to employees of the Petitioner available for inspection to the DILHR auditor. Further requests by the auditor to examine a host of personal financial books and records caused the Petitioner to respectfully state his 4th and 5th Amendment rights.

DILHR responded to the first audit meeting by having a Subpoena Duces Tecum served upon the Petitioner requesting him to produce for inspection a host of private financial records.

The second audit meeting, at the office of DILHR auditor in Siren, Wisconsin, Followed the same general format as the first meeting. The Petitioner had his private books and records with him and did make available for inspection all records pertinent to employees of the Petitioner. When the auditor requested inspection of the subpoenaed personal financial records, without producing a warrant or an interjurisdictional grant of immunity for them, the Petitioner had only one option available and that was to respectfully claim his 4th and 5th Amendment rights.

The Respondent then had a second Subpoena Duces Tecum served upon the Petitioner which re-

sulted in a third meeting. This meeting also followed the same format as the previous two meetings with the Petitioner ultimately claiming his 4th and 5th Amendment rights when requested to produce for inspection a host of private financial records.

As a result of the third audit meeting, the Respondent had a Writ of Body Attachment served upon the Petitioner for the person of Donald G. Pautz and the private books and records allegedly under his control.

At a hearing on October 12, 1983, the state judge found that the Petitioner's reason of asserting his 4th and 5th Amendment rights was not a reasonable excuse for not complying with the Subpoena Duces Tecum. The state judge then found the Petitioner to be in civil contempt and ordered him to be incarcerated in the county jail for a period of six months, unless he earlier purged his comtempt by producing the subpoenaed books and records.

The pro se Petitioner, hoping to have his constitutional objections passed upon by the court, removed the case to the Federal District

Court for the Western District of Wisconsin on January 5, 1984. After removal, DILHR moved to remand the proceeding to the state court and the District Court agreed.

The Petitioner, still seeking to have his objections passed upon by the court, appealed the decision of the District Court to the United States Court of appeals for the Seventh Circuit.

Subsequently, the Court of Appeals agreed in part and dismissed in part the decision of the District Court.

Federal Questions Raised

On 11 October 1983, the defendant filed with the State of Wisconsin, Polk County, Circuit Court, an AFFIDAVIT AND PETITION FOR REDRESS OF GRIEVANCES. A copy of the AFFIDAVIT AND PETITION is attached and labeled as Appendix C. Within the document the defendant stated that that he is appearing specially and not generally for the express purpose of protesting the pretended authority and/or jurisdiction

over the defendant. Also, the DILHR received a demand for proof of jurisdiction by certified mail on 13 October 1983. To date, none of the defendant's requests for proof of jurisdiction, on the record, have been given consideration.

On 5 January 1984 the defendant, recognizing again the federal questions involved in this case, filed with the United States District Court for the Western District of Wisconsin a PETITION FOR REMOVAL OF STATE CASE, No. 83 CV 508, JURY TRIAL DEMANDED. A copy of the petition is attached Appendix D. Even though the defendant has demanded trial by jury, to this day, the courts have not yet considered this demand.

On 6 July 1984 the United States District Court for the Western District of Wisconsin received and filed the defendant's BRIEF IN OPPOSITION OF PLAINTIFF'S MOTION TO REMAND PROCEEDING TO STATE COURT. The brief contained, among other things, documentation in the form of Supreme Court decisions showing that it is the duty of the judicial

system to see that essential justice is done and also that the United States Constitution is upheld as the supreme law of the land and to guard against any abridgments thereof.

Basis for Federal Jurisdiction

At least seven times Federal questions sought to be reviewed were in the court of first instance by the defendant's pleadings and testimony and have not yet been passed upon by the courts.

First, the defendant's MOTION TO DISMISS, MEMORANDUM OF LAW, filed on 11 October 1983 stated that it "is a mandate of law that the court must have jurisdiction over the person/subject-matter before the court may properly or lawfully hear the cause of action before it." Appendix E.

Second, also in the above mentioned memorandum it is pointed out that "anything in the nature of an issue or potential issue (law or fact) must be reviewed at the trial

level and finally determined by issue of an order by the trial tribunal before any judicial remedy and relief can be granted. US S CT DIGEST." The memorandum also stated that until jurisdiction has been proven, "there can be no trial de novo." Appendix E.

Third, by the defendant's AFFIDAVIT AND PETITION FOR REDRESS OF GRIEVANCES of 11 October 1983 the defendant points out the supremacy clause of the Sixth Article of the United States Constitution, "this court is FIRST BOUND to honor the Law as secured by the clear unambiguous language of the United States Constitution" and also that the "court is bound to honor and uphold the Constitution of the State of Wisconsin insofar as it is not repugnant to the U.S. Constitution or the principles of the Declaration of Independence." Appendix C.

Fourth, also presented in the court of first instance, on 11 October 1985. The defendant raised the question of the unconstitutionality of the Wisconsin statute under

which the defendant is accused of violating. The defendant moved for an order dismissing the "action on the grounds that the Statute under which the Defendant is charged is unconstitutional on its face, unconsititutionally creates unreasonable presumption shifting the burden of proof to the Defendant, and deprives the Defendant of his right against self-incrimination contrary to the 4th, 5th, 6th, and 14th Amendments to the United States Constitution, Article 1, Sections 1 and 2 of the Wisconsin Constitution." Appendix F.

Fifth, by his MOTION FOR NOTIFICATION OF RIGHTS SUA SPONTE, the defendant requested that the "Court notify this Defendant of any violation of rights whether enumerated in the Constitution of the United States, this State or County, or by the rules of this Court, SUA SPONTE." Appendix G.

Sixth, also by the defendant's MOTION FOR NOTIFICATION OF RIGHTS SUA SPONTE he states that he is entitled to be notified

"prior to Defendant's losing such rights, to the violation thereof, in order to protect Defendant's rights under the Constitution of the United States, the Constitution of this State, or any other rights secured at common law either in this County or by the rules of this Court or the Judge of this Court." Appendix G.

Seventh, by the defendant's MEMORANDUM OF LAW, HAINES v KERNER, 404 U.S. 519, filed in the court of first instance on 11 October 1983 and throughout this proceeding, the defendant has consistantly shown evidence in the form of Supreme Court decisions and Federal Rules of Civil Procedure that the pro se defendant must be provided opportunity to present supporting evidence in this case. Appendix H.

REASONS FOR GRANTING THE WRIT

When a federal court of appeals has departed from the usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, due process calls

for an exercise of this court's power of supervision.

The cause of action in this case at bar is the defendant's claiming his constitutional rights on being compelled to produce his private books and records, by Subpoena Duces Tecum, for inspection. The DILHR's identification of this action as a violation of Wisconsin statutes does not void out the confrontation as one involving the defendant's constitutional rights, specifically his 4th, 5th, and 14th Amendment rights. Boyd v. United States, 116 U.S. 616, Hale v. Henkel, 201 U.S. 76, Adams v. New York, 192 U.S. 598, Spevack v. Klein, 385 U.S. 511, Lefkowitz v. Turley, 414 U.S. 70, Garrity v. New Jersey, 385 U.S. 493, Malloy v. Hogan, 378 U.S. 1, Hoffman v. United States, 341 U.S. 479, Counselman v. Hitchcock, 142 U.S. 547.

That no court has passed upon the constitutional issues in the instant case is not inconsistant with the precedent set out

by the supreme court in Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 56 S. Ct. 466, 80 L. Ed. 688 (1936). In the Ashwander decision, the court stated that it will pass upon the constitutionality of legislation only if it is in the court of last resort and that the court will not "anticipate a question of constitutional law in advance of the necessity of deciding it."

Another reason that the case at bar should call upon this courts supervisory power is that jurisdiction over the defendant is yet to be proven, on the record, as required by supreme court decisions. FMC Seatrain Lines, Inc., 411 U.S. 726, Owens v. City of Independence, Mo., 100 SCT 1398, Interstate Commerce Commission v. Brimson, 154 U.S. 447, McNutt v. General Motors, 298 U.S. 189, Thompson v. Gaskill, 315 U.S. 673, Latana v. Hopper, 102 F 2d 116.

Still another reason the court should exercise its supervisory power is to see

that essential justice is done as required by FRCP 8(f):

> "(f) Construction of Pleadings. All pleadings shall be so construed as to do substantial justice."

Finally, it is noted that the pro se defendant is not skilled in the science of law, but is only seeking that his constitutional rights are afforded him and that justice be done. The pleadings, however inartfully done are to be considered so as to do essential justice. Haines v. Kerner, 404 U.S. 519, Conley v. Gibson, 355 U.S. 41, Dioguardi v. Durning, 139 F 2nd 774.

## CONCLUSION

For the foregoing reasons, Petitioner Donald G. Pautz, respectfully requests that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit and pass upon the constitutional provisions involved in this case at bar.

Respectfully submitted,

Donald G. Pautz

Donald G. Pautz
Petitioner
Route 1, Box 312
Centuria, Wisconsin
54824

CERTIFICATE OF SERVICE

I hereby certify that three true and correct copies of the foregoing instrument were forwarded in the United States mail, certified No. P 733 398 160, postage prepaid, to Mr. Michael J. Mathis, Department of Industry, Labor and Human Relations, 201 East Washington Ave., P.O. Box 8914, Madison, Wisconsin 53708 this 4th day of November, 1985.

Donald G. Pautz

Donald G. Pautz

# APPENDIX

Appendix A

OPINION OF THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

STATE OF WISCONSIN, DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS,
Plaintiff-Appellee,

v.

DONALD G. PAUTZ,
Defendant-Appellant.

No. 84-2978

United States Court of Appeals,
Seventh Circuit.

June 26, 1985.

This cause came before the Court for decision on the record from the United States District Court for the Western District of Wisconsin.

On consideration whereof, it is ordered and adjudged by this Court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, dismissed in part and affirmed in part, in accordance with the order of this court entered this date. Costs on appeal are assessed against appellant.

Appendix B

ORDER OF THE UNITED STATES COURT OF APPEALS

FOR THE SEVENTH CIRCUIT

STATE OF WISCONSIN, DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS,
Plaintiff-Appellee,

v.

DONALD G. PAUTZ,
Defendant-Appellant.

No. 84-2978

United States Court of Appeals,
Seventh Circuit.

June 26, 1985.

Donald Pautz appeals from an order of the district court remanding this case to the state court from which it was removed. We dismiss in part and affirm in part.

The genesis of this case involves an attempt by Wisconsin's Department of Labor, Industry and Human Relations (DILHR) to audit Pautz's business records to determine his compliance with the tax provisions of the state's unemployment compensation laws.[1] Upon Pautz's failure to voluntarily

---

[1] DILHR is the state agency charged with the administration and enforcement of Wisconsin's
(footnote continued)

turn over certain business records for inspection by DILHR officials, DILHR issued a subpoena for their production. When Pautz refused to comply with the subpoena, DILHR commenced an enforcement action against Pautz pursuant to Sec. 885.12, Wis. Stats.,[2] in the Circuit Court for Polk County,

---

[1] (cont.)
unemployment compensation laws. Sec. 15.221, Wis. Stats. Among other things, it is DILHR's responsibility to determine whether or not an employer is subject to the statute's taxation provisions, and, if so, how much tax is owed. In furtherance of this duty, DILHR is authorized to inspect the business records of any employer of individuals in Wisconsin, Sec. 108.21(1), Wis. Stats., and to issue subpoenas for the production of records if not voluntarily made available. Sec. 108.14(2m), Wis. Stats.

[2] In the event a lawful subpoena has not been obeyed, Sec. 885.12, Wis. Stats., provides that a writ of attachment may be issued by a judge of the county in which the records were to be produced. Upon the issuance of such a writ, the person to whom it is directed must appear before the judge and establish a "reasonable excuse" for failing to produce the requested records. If the judge finds no reasonable excuse, the statute further provides that the judge may find the individual in contempt and may order that he be held in the county jail for the period prescribed by law unless the records are produced.

Wisconsin,[3] and a hearing was held on October 12, 1983. The state trial judge found Pautz in civil contempt and ordered him imprisoned for a period of six months unless he purged his contempt by producing the requested records.

Shortly before his incarceration was to commence, and almost two months after the hearing, Pautz filed a pro se petition to remove the case to federal court. In his petition Pautz asserted removal was proper under 28 U.S.C. Sec. 1443.[4]

---

[3] Although the subpoena was issued on September 2, 1981, DILHR did not attempt to enforce the subpoena between the date of its issuance and May 24, 1983, because of the pendency of a state court action in which Pautz sued two DILHR employees for monetary and injunctive relief based on an earlier attempt to inspect business records. This action was dismissed with prejudice in February 1983.

[4] Title 28 U.S.C. Sec. 1443 provides:

> Any of the following civil actions or criminal prosecutions, commenced in a state court may be removed by the defendant to the district court of the United States for district and division embracing the place wherein it is pending:
>
> (1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the

In further support of his petition, Pautz filed a "Notice and Supplemental Jurisdictional Statement" in which he maintained that jurisdiction was also proper under 28 U.S.C. Sections 1331 and 1441(b). DILHR responded and moved to remand the action to state court on the grounds that the petition for removal was not timely filed, the Tax Injunction Act of 1837 prohibited removal, and U.S.C. Sec. 1443 did not provide a basis for removal. The district court agreed with DILHR on each ground and remanded the case to the state court.

---

[4](cont.)
equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the grounds that it would be inconsistent with such law.

Since Sec. 1443(2) provides for removal only by "federal officers or agents or those authorized to act with or for them in affirmatively executing duties under any federal law providing for equal civil rights," City of Greenwood v. Peacock, 384 U.S. 808, 824 (1966), its provisions are inapplicable to this case.

Generally, remand orders are not reviewable on appeal or otherwise except for civil rights cases removed pursuant to 28 U.S.C. Sec. 1443. 28 U.S.C. Sec. 1447(d); Self v. Self, 614 F. 2d 1026, 1027 (5th Cir. 1980) (per curiam); 14 Wright, Miller & Cooper, Federal Practice and Procedure Sec. 3740 (1976).[5] Jurisdiction to review the remand of a Sec. 1441(b) petition is not supplied by also seeking review under Sec. 1443. Robertson v. Ball, 534 F. 2d 63, 65 (5th Cir 1976) (per curiam). See also Noel v. McCain, 538 F. 2d 633, 635 (5th Cir. 1976) (where removal jurisdiction based on 28 U.S.C. Sections 1441(a) and 1443(1), only latter reviewable); Applalachian Volunteers, Inc. v. Clark, 432 F. 2d 530, 534 (6th Cir. 1970) (where removal jurisdiction based on 28 U.S.C.

---

[5] In Thermtron Products, Inc. v. Hermansdorfer, 423 U.S. 336 (1976), the Supreme Court held that remand orders issued on grounds not authorized by 28 U.S.C. Sec. 1447(c) are appealable. The Court emphasized, however, that "remand orders issued under Sec. 1447(c) and invoking the grounds specified therein--that removal was improvident and without jurisdiction--are immune from review under Sec. 1447(a)." Id. at 346.

Sections 1442 and 1443, only latter reviewable). We therefore dismiss this appeal for lack of jurisdiction to the extent Pautz seeks review of the district court's ruling on the appropriateness of removal under Sec. 1441(b).[6]

Removal petitions which invoke the provisions of 28 U.S.C. Sec. 1443 stand in a different light. Until its amendment in 1964 appellate review of a remand order of a case removed pursuant to any statute was prohibited.[7] With the enactment of Sec. 901 of the Civil Rights Act of 1964, 28 U.S.C. Sec. 1447(d), Congress expressly opened the way for immediate appeal of remand orders in cases

---

[6] Removal jurisdiction is based entirely on statutes. Cook v. Weber, 698 F. 2d 907, 909 (7th Cir. 1983). See 28 U.S.C. Sections 1441-1451. Section 1331 of Title 28, United States Code, (cited by Pautz as an additional basis for removal) applies to lawsuits initiated in federal court and provides no basis for removal of an action from state court.

[7] Prior to 1875, a remand order was regarded as a nonfinal order reviewable by mandamus, but not by appeal. In 1875, Congress provided for review by the Supreme Court on a writ of error or appeal. But in 1887 Congress closed off all appellate review of remand orders. See Georgia v. Rachel, 384 U.S. 780, 786 n.6 (1966).

involving the alleged denial of equal civil rights. See Georgia v. Rachel, 384 U.S. 780, 786-87 (1966).

The right to remove a case from state to federal court is governed entirely by statute. Cook v. Weber, 698 F. 2d 907, 909 (7th Cir. 1983). Similarly, federal statutory law controls the remand of a suit after its removal. Ryan v. State Board of Elections of State of Illinois, 661 F. 2d 1130, 1133 (7th Cir. 1981). In pertinent part, 28 U.S.C. Sec. 1447(c) states:

> If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, . . ..

Pautz had the burden of establishing his right to removal. Jones v. General Tire & Rubber Co., 541 F. 2d 660, 664 (7th Cir. 1976); 14 Wright, Miller & Cooper, Federal Practice and Procedure Sec. 3721 (1976). To remove a case from state court under 28 U.S.C. Sec. 1443(1), Pautz was initially required to establish his reliance upon a federal law guaranteeing a specific civil right and designed to protect against racial discrimination. Georgia v. Rachel, 384 U.S. at

792-794. Additionally, Pautz must show that he has been denied or cannot enforce the right created by that civil rights law in state court and that the denial be manifest in a formal expression of state law. Id. at 803-805. See also Johnson v. Mississippi, 421 U.S. 213, 219 (1975).

In his removal petition Pautz complains in conclusory terms that he "is denied or otherwise 'cannot enforce,' in the Courts of the State of Wisconsin, rights secured to him by Acts of Congress providing for the equal civil rights of citizens of the United States (i.e. Title 18 U.S.C. Sec. 241 and Sec. 242)." Such an assertion without more, falls far short of the showing necessary to gain removal to federal court under Sec. 1443. Neither Sec. 241 nor Sec. 242 of Title 18 United States Code, establishes a specicivil right.[8] Rather, the guarantees of those

---

[8] Sections 241 and 242 of Title 18, United States Code, are criminal statutes. Section 241 proscribes conspiracies that prevent or hinder any individual "in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States . . .." Section 242 imposes criminal sanctions upon anyone who, under color of any law, "willfully subjects

statutory provisions are phrased in terms of general application available to all individuals. Moreover, Pautz makes no showing that DILHR 's action discriminates against him in terms of race. Finally, the petition is devoid of any statement of facts which indicates that Pautz's complaints could not be vindicated in state court.[9] Since it is clear that the district court was without jurisdiction under Sec. 1443, its remand order was proper, and we need not address the other grounds relied upon by the district court.

DISMISSED IN PART; AFFIRMED IN PART.

---

8 (cont.)
any inhabitant of any State, Territory, or District to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such inhabitant being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens . . . ."

9 Indeed, Pautz's petition is devoid of any statement of facts which would entitle Pautz to removal. Such a statement is required by 28 U.S.C. Sec. 1446(a) which provides that the removal petition contain "a short and plain statement of facts." 14 Wright, Miller & Cooper, Federal Practice and Procedure Sec. 3733 (1976).

Appendix C

AFFIDAVIT AND PETITION FOR

REDRESS OF GRIEVANCES

STATE OF WISCONSIN, DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS,
Plaintiff,

v.

DONALD G. PAUTZ,
Defendant.

No. 83 CV 508.

State of Wisconsin,
Circuit Court,
Polk County.

October 11, 1983.

Comes now the Defendant specially and not generally herein, to swear upon an Oath that he does come peaceably to ransom his life from the unlawful claims this Court has directed against him, and to protest the pretended authority and/or jurisdiction giving him cause to fear for his life, and to enter this Petition For Redress Of Grievances respectifully commanding the Court to obey the Law as it regards the health of Life, Liberty and Property of this Defendant.

I

Under the Law of this State, and by the

supremacy clause of the Sixth Article of the United States Constitution, this Court is FIRST BOUND to honor and uphold the Law as secured by the clear unambiguous language of the United States Constitution.

II

This Court is bound to honor and uphold the Constitution of the State of Wisconsin insofar as it is not repugnant to the U.S. Constitution or the principles of the Declaration of Independence.

III

Statutes, case laws, and other court's opinions are to be respected as lawful authorities only so long as they are not repugnant to or in contravention of the U.S. Constitution or the principles of the Declaration of Independence.

IV

That the subject Subpoena Duces Tecum is not a lawful subpoena, because it bears the seal of no Court or the signature of any Court Clerk as any judicial subpoena must, and that the statute of this State allowing otherwise is clearly

alien to the people and is in violation of and in conflect with the Separation of Powers Doctrine as the judicial powers shall reside in the Courts--no other branches were ever properly empowered to exercise judicial powers. This dangerous co-mingling of judicial and executive powers frightens Defendant for life itself, because it is expressly forbidden by the supremacy clause of the Third Article of the U.S. Constitution, the Constitution of the State of Wisconsin, and the Federalist Papers No.'s 47 and 48.

V

That the Courts of this State currently disregard any law they find uncomfortable to maintain their positions against the People, and more particularly this Defendant. Therefore, there is no Tranquility; there is no Defense; there is no Welfare against such; and there is no more Blessing of Liberty to either this Defendant or his Posterity as was once secured by the Preamble to the Constitution of the United States of America.

VI

I further affirm that though I have broken

no law pursuant to either the U.S. Constitution or the Constitution of this State, that I am compelled to fear for my life since contempt of one part of the law advances the same for another part, and as the charges have shown, the Right and Lawful forms of our government, upon which this Defendant would rely, have been altered from their fundamental principles by enlargement through statutes, rulings and opinions, which are inferior, alien, and foreign to the rights which were once common to the People.

PRAYER FOR RELIEF

Since, I, at one time could have enjoyed the rights I rely upon as so necessary to my defense, I do hereby request that such rights be returned, and that this Court demand proof, on the record, that Plaintiff, ie. executive agency, has the constitutional authority and/or jurisdiction in this instant case, and let me go peaceably about my business by dismissing this action.

Dated this 11th day of October, 1983.

/S/

Donald G. Pautz, Defendant

Respectfully submitted,

/s/
Donald G. Pautz, Petitioner,
Defendant
Route #1
Centuria, WI 54824

VERIFICATION

STATE OF WISCONSIN)
) ss.
County of Polk )

I, Donald G. Pautz, being duly sworn upon oath says that he is the Petitioner herein; that he has prepared and read the foregoing Petition for Removal, and the matter and things contained are true, as he verily believes.

/s/
Donald G. Pautz, Petitioner

Sworn and subscribed to before me
this day of January, 1984.

/s/
Notary Public My commission expires

_____, 19__

Appendix E

MOTION TO DISMISS,

MEMORANDUM OF LAW,

File No. 83 CV 508

STATE OF WISCONSIN, DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS,
Plaintiff,

v.

DONALD G. PAUTZ
Defendant.

No. 83 CV 508.

State of Wisconsin,
Circuit Court,
Polk County.

October 11, 1983.

The condition precedent necessary to confer jurisdiction, allowing the State or Agency to regulate the unenfranchised free man. Article 1, Section 1, Constitution of the State of Wisconsin.

Administrative rules/regulations are not law, there being no substantive law involved, therefore and otherwise it being at most mere evidence of the law, certainly not proof thereof.

Rules and regulations of this nature or more specifically, equity on statute which equity's

sole purpose is to compliment and protect the law.

In the instant case at bar it is incumbent upon the agency or the State to establish the consition precedent that would allow regulation and subsequent enforcement thereof.

The State and Municipalities must confine their regulations to objects or subjects to which they have a substantial relationship "nexus" (per SALWASSER v S CT. 94 CA3rd 223) and then only where there is a substantial threat to the "public" safety. BOUNT v DELUCA, 72 ALR 657; OSHA v BAR, 436 US 307; SEE v SEA 387 US 541; CAMARA v SE, 387 US 523; LEHN v LASP, 410 US 456, 411 US 910; WIS v JCP, 311 US 435, 812 US 712; NSCP v MNN 358 US 450; AMER v NEILL, 380 US 451.

The freeman has an absolute right to be left unfettered by regulation over his person or property in the normal exercise of his right to life, liberty, property and pursuit of happiness.

The individual . . . owes nothing to the State for he receives nothing therefrom. HALE

v HENKEL, 201 US 43.

The powers confered on the State were granted by the people, but those powers granted are not unlimited. The Constitution is a limitation on those powers, designating those areas that may not be regulated or controlled by the State in any manner whatsoever.

Where rights secured by the Constitution are involved, there can be no rulemaking or legislation which would abrogate them. MIRANDA v ARIZONA, 380 US 436 (1973).

The judicial branch has only one duty; to lay the articles of the Constitution besides the statute which is challenged, and to decide whether the latter squares with the former. The only power the court has is the power of judgment. U.S. v BUTLER, 297 US 193.

NORTON v SHELBY COUNTY, 118 US 178, an unconstitutional law is not a law. It confers no rights, imposes no duties and affords no protection.

The U.S. Constitution and the Constitution of the State of Wisconsin, secure certain rights to the Defendant. These rights are inviolate and

no State legislative body, agency, municipality or any group or individual may legislate or make rules contrary to these rights. MIRANDA v ARIZONA, supra.

The claim and exercise of a Constitutional right cannot be converted into a crime. MILLER v US, 230 F 486 at 489.

It is self evident that by Constitutional law and common law the Defendant cannot be regulated in an area protected by Constitutional right or where no substantial relationship exists to confer regulatory capacity. (Re is in itself injurious to the public or individuals) for inter-alia the State me no related duty not thing (except Constitutional duties) as State/its Minicipalities owe no such duty to any individual. WARREN v CITY, 444 A2d 1 (1984).

JURISDICTION

It is a mandate of law that the Court must have jurisdiction over the person/subject-matter before the Court may properly or lawfully hear the cause of action before it.

In the case at bar, the agency responsible

for the regulations involved in the instant cause of action must establish on the "exclusive record for review" that facts, law and "substantial relationship" exists giving this agency the jurisdiction to promulgate rules or regulations involving the Defendant's person, property, rights, liberties and immunities.

Defendant has petitiones the agency in question to establish that jurisdiction in fact does exist. The right to administrative hearing is secured by the First Amendment to the U.S. Constitution and Article 1, Section 4; Wisconsin Constitution. The right to petition the govenment or any department thereof may not be abridged for any reason or expediency.

No one is entitled to judicial relief for injury supposed or threatened until all administrative avenues of remedy have been exhausted. MEYERS v BETHLEHEM, 82 LEd 638.

The courts have spoken to the requirement on numerous occasions, that all administrative facts and issues be determined to finality before any resort to the courts may be sustained.

It is one of the necessities of the administration of justice that fundamental questions be determined in an orderly way and a person may not appeal to the courts for relief as to an administrative determination of a question of fact without going through the preliminary sifting process provided by statutes. US v SING TUCK, 48 LEd 917.

AIRCRAFT v HIRSCH, 91 LEd 1796; issues must be resolved to finality before a resort to the courts can be maintained. The quasi judicial administrative board which hears issues must have declared issue resolved to finality otherwise judicial action can not be sustained. DELEWARE v. US, 69 LEd 369.

The rule is, anything in the nature of an issue or potential issue (law or fact) must be reviewed at the trial level and finally determined by issue of an order by the trial tribunal before any judicial remedy and relief can be granted. US S CT DIGEST.

The fact that the agency refuses to grant formal or informal hearing to the Defendant does

not absolve the agency of this responsibility. The refusal by the agency to conduct hearings constitutes a final determination of the issue involved and the "exclusive record for review" is complete. There being no jurisdictional facts or proof thereof on the record, the agency has failed to prove jurisdiction which by law will bar the agency from attempting to enforce supposed case in question. When the State or agency seeks remedy in the judicial forum the judiciary is limited to certiorari or "search and certify the record". Thus there can be no trial de novo. The Court cannot substitute its "general" jurisdiction for the special ("expertise") jurisdiction of the administrative agency. Additionally, the Court cannot substitute its; evidence, testimony, record, fact finding, rationale, nor judgment, for that of such an agency as a matter of law. Furthermore, courts cannot allow "imginative government counsel" to argue his case before the court, for the same as the above are devious and prohibited devices, Known as "post hoc rationalization", which is also prohibited

as a matter of law.

In light of the foregoing, law and fact, the agency lacks jurisdiction to make rules and regulations, is without jurisdiction to enforce said regulation for lack of substance. This Court is without jurisdiction to hear this matter in that the agency has not, and did not, establish the jurisdiction of the agency over the person of the Defendant and subject-matter thereof.

Defendant further states that the Wisconsin Statute, 885.01, is UNCONSTITUTIONAL for the very simple reason that Article 1, Sections 1 and 2, Wisconsin Constitution guarantees the freedom and independence of the unenfranchised citizen. By this fact, no cause of action exists, therefore there is no issue in controversy, thus there is nothing for the court to adjudicate, consequently no trial may be held. The State or agency cannot possibly prevail in this case in that the actions of the agency or State is a matter of estoppel which acts as a bar to any prosecution of this case. Therefore, the Court must dismiss for lack of jurisdiction.

Dated this 11th day of October, 1983.

Respectifully submitted,

/s/
Donald G. Pautz, Defendant

Appendix F

NOTICE OF MOTION &

MOTION TO DISMISS

STATE OF WISCONSIN, DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS,
Plaintiff,

v.

DONALD G. PAUTZ,
Defendant.

No. 83 CV 508.

State of Wisconsin,
Circuit Court,
Polk County.

October 11, 1983.

PLEASE TAKE NOTICE that the Defendant, Donald G. Pautz, appearing specially and upon all the files, records and proceedings, heretofore had and taken herein, will appear in the Circuit Court of Polk County presided over by the Honorable Donald J. Sterlinski, in his courtroom in the Courthouse at Balsam Lake, Wisconsin, on the 12th day of October, 1983, at 11:00 o'clock in the forenoon, or as soon thereafter as he may be heard, and will move the Court for an order dismissing the aboved-entitled action on the grounds that the Statute under which the Defen-

dant is charged is unconstitutional on its face, unconstitutionally creates unreasonable presumption shifting the burden of proof to the Defendant, and deprives the Defendant of his right against self-incrimination, and confrontation contrary to the 4th, 5th, 6th and 14th Amendments to the United States Constitution, Article 1, Sections 1 and 2 of the Wisconsin Constitution.
Dated this 11th day of October, 1983.

/s/
Donald G. Pautz, Defendant

Appendix G

MOTION FOR NOTIFICATION OF

RIGHTS SUA SPONTE

STATE OF WISCONSIN, DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS,
Plaintiff,

v.

DONALD G. PAUTZ,
Defendant.

No. 83 CV 508.

State of Wisconsin,
Circuit Court,
Polk County.

October 11, 1983.

Comes now the Defendant specially and not generally herein, to move this Court to honor the demand to protect and preserve all rights to which the Defendant is entitled as follows:

I

This Court notify this Defendant of any violation of rights whether enumerated in the Constitution of the United States, this State or County, or by rules of this Court, SUA SPONTE.

II

That such notification take place prior to Defendant's losing such rights, to the violation

thereof, in order to protect Defendant's rights under the Constitution of the United States, the Constitution of this State, or any other rights secured at common law either in this County or by the rules of this Court or the Judge of this Court.

Dated this 11th day of October, 1983.

Respectfully submitted,

/s/

Donald G. Pautz, Defendant

Appendix H

MEMORANDUM OF LAW

HAINES v KERNER,

404 US 519

STATE OF WISCONSIN, DEPARTMENT OF INDUSTRY, LABOR AND HUMAN RELATIONS,
Plaintiff,

v.
DONALD G. PAUTZ,
Defendant.

No. 83 CV 508.

State of Wisconsin,
Circuit Court,
Polk County.

October 11, 1983.

Comes now the Defendant specially and not generally herein, and shows to the Court as follows:

In the matter of HAINES v KERNER, Mr. Haines, who was incarcerated at Menard Prison at the time of his complaint, commenced a pro se litigation - naming as defendants - the officials of Menard Prison, as well as the Governor of the State of Illinois, who was at that time, Otto Kerner. The lower courts held that the case presented by the plaintiff be dismissed under Rule 12 of the

Federal Court Rules to wit: Plaintiff has failed to state a claim upon which relief could be granted. Plaintiff's response was a claim to the higher courts - that he had the right to have his motions heard. The U. S. Supreme Court ruled as follows:

> Allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the pro se complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief".
>
> Accordingly, although we intimate no view whatever on the merits of petitioner's allegations, we conclude that he is entitled to an opportunity to offer proof.

WHEREFORE, the Defendant respectfully requests the Court to graciously hear and consider his motions.

Dated this 11th day of October, 1983.

Respectfully submitted,

/s/

Donald G. Pautz, Defendant